IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.503 OF 2004

IN

SUIT NO.1924 OF 1988

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Tata Engineering &
Locomotive Co.Ltd. ...Plaintiff

v/s.

The Deccan Co.op. Urban
Bank Ltd. & Anr. ...Defendants

...

Mr.P.V. Palan i/b N.H. Nathani for the Plaintiff.

Mr.K.H. Mody i/b M/s.Ram & Co. for the Defendants.

...

CORAM: D.K.DESHMUKH, J.

DATED: 10TH DECEMBER,2004

P.C.:

1. This Notice of Motion is taken out by the

Defendant for setting aside the exparte decree passed by this court. Perusal of the order shows that the exparte decree was passed, because the Defendant though served not filed written statement. The learned Counsel for the Plaintiff relies on the judgment of the Division bench of this Court in the case Dhanwantrai R. Joshi & Ors. v/s. Satish J. Dave & ors, 1999 (1) Bom.C.R., page 97 to contend that as the decree is passed under the provisions of Order 8 of CPC, this Notice of Motion is not maintainable. The learned Counsel appearing for the Defendant on the other hand relies on the judgment of the learned Single Judge of this court in the case of **Chandrakant Babulal Panchal and Anr. V/s Ashwinibhai Mancharam Patel and another, 2003 (1) Mh.L.J., 191**. The judgment of the Division Bench is clear, that if the decree is passed in the absence of the written statement it will clearly be a decree passed under Order 8 of CPC. The judgment of the Division Bench is binding on me. Hence, Notice of Motion cannot be entertained. It is disposed of.

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